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**THIS DISPOSITION
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Paper No. 12
RLS/CV

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gregory L. Horne

Serial No. 75/783,734

James E. Bradley of Bracewell & Patterson, LLP for Gregory L. Horne.

Robin S. Chosid, Trademark Examining Attorney, Law Office 102 (Thomas Shaw, Managing Attorney).

Before Simms, Seeherman and Walters, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Gregory L. Horne (applicant) has appealed from the final refusal to register the mark INTERCEPTOR ID for a telephone call monitor that diverts calls from unknown persons to an audio recorder.¹ The Examining Attorney has required a disclaimer of the word "INTERCEPTOR" because of her contention that this word is merely descriptive of

¹ Application Serial No. 75/783,734, filed August 19, 1999, based upon applicant's bona fide intention to use the mark in commerce.

applicant's goods. See Section 6(a) of the Act, 15 USC §1056(a). Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

It is the Examining Attorney's position that, in view of the meanings of the words "intercept" ("to stop, deflect, or interrupt the progress or intended course of") and "interceptor" ("one that intercepts...")² and the nature of applicant's goods, which "intercept" or divert a call from an unknown person to a recorder, the term "INTERCEPTOR" in applicant's mark is merely descriptive of a quality, characteristic, feature or purpose of applicant's goods. In other words, the Examining Attorney's contends that applicant's product blocks or intercepts an incoming call from an unrecognized telephone number and diverts that call to a recorder. The Examining Attorney maintains that the relevant public would immediately understand the nature of applicant's goods from the word "INTERCEPTOR" in applicant's mark.

Applicant, on the other hand, maintains that the word "INTERCEPTOR" in his mark is only suggestive because purchasers must use some imagination or thought in order to determine the attributes of applicant's goods. Applicant

² American Heritage Dictionary of the English Language (3rd ed. 1992).

argues that, even if the word conveys some idea of the quality of applicant's goods, the term "INTERCEPTOR" is so vague that it does not immediately convey information concerning applicant's goods with any degree of particularity.

The word "interceptor" is too vague to convey information about Applicant's goods with the requisite degree of particularity. In the context of applicant's goods, "interceptor" could suggest a device which completely stops all incoming telephone calls. "Interceptor" could suggest a device which interrupts, or intercepts, an ongoing telephone call when a second incoming call is received. Or "interceptor" could suggest a device which merely intercepts the identity of the incoming caller and displays the caller's telephone number. These are just a few of the many concepts the word "interceptor" could possibly suggest in the context of Applicant's goods.

Applicant's brief, 3-4. While applicant states that "the device performs some tasks which could possibly be considered 'intercepting,'" the function of the device is to filter or to screen calls, according to applicant. Applicant maintains that registration will not inhibit competition because the term "INTERCEPTOR" is not commonly used to describe telephone call monitoring and screening devices. In sum, it is applicant's position that the Examining Attorney has not made out a prima facie case and that any doubt should be resolved in favor of applicant.

In response to these arguments, the Examining Attorney maintains that the fact that applicant may be the first and only user of a merely descriptive term does not justify registration.

Upon careful consideration of this record and the arguments of the attorneys, we agree with applicant that the word "INTERCEPTOR" in his mark is only suggestive of the function or purpose of his telephone call monitors. Applicant's devices are intended to recognize whether an incoming call is from a preprogrammed number and, if it is not, to record that call. Applicant's monitors act as screening devices to separate calls that are allowed to ring and those that are recorded. Unrecognized incoming calls are not completely "intercepted" or "stopped"; they are merely diverted to a recorder. The term "INTERCEPTOR," in our opinion, only hints, somewhat inaccurately, at the screening function of applicant's call monitors and does not immediately convey or describe a feature or function of the goods.

We also note that there is no evidence that others have used this term to describe their similar devices. Finally, if there is doubt on the question of mere descriptiveness, and we confess that this case presents such a doubt, that doubt must be resolved in favor of publication. *See In re*

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Intelligent Medical Systems Inc., 5 USPQ2d 1674 (TTAB 1987)
and cases cited therein.

Decision: The requirement for a disclaimer is reversed.

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